

REMARKS

By this Amendment, Applicant amends claims 1, 2, 6-8, 10, 12, 13, 17, 22, 28, 30, and 34-37. Claims 1-37 remain currently pending.

In the Office Action, claims 10, 13, and 30 are objected to as being dependent upon a rejected base claim, but indicated allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 36 stands rejected under 35 U.S.C. § 112, second paragraph. Claims 1-9, 11, 12, 14-29, and 31-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,687,587 to Kacel ("Kacel") in view of U.S. Patent No. 7,284,236 to Zhou et al. ("Zhou").<sup>1, 2</sup>

Applicant thanks the Examiner for pointing out allowable subject matter and indicating claims 10, 13, and 30 to be allowable. Applicant respectfully traverses the rejections.

**Regarding the rejection under 35 U.S.C. § 112**

Applicant has amended claim 36 to recite "the target module" instead of "the target machine," as suggested by the Examiner. Accordingly, Applicant respectfully requests withdrawal of the Section 112 rejection of claim 36.

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

<sup>2</sup> The Office Action makes various "official notices" unsupported by documentary evidence. "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." M.P.E.P. § 2144.03.A. Applicant submits that the subject matter of claims 11, 12, 16, and 34 is not "capable of instant and unquestionable demonstration as being well-know."

**Regarding the rejections under 35 U.S.C. § 103(a)**

Applicant respectfully traverses the rejection of claims 1-9, 11, 12, 14-29, and 31-37 under 35 U.S.C. § 103(a) as being unpatentable over Kacel in view of Zhou, because a *prima facie* case of obviousness has not been established.

To establish a *prima facie* case of obviousness based on combination or suggestion of prior art, “Office personnel must articulate . . . a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference.” M.P.E.P. § 2143.A (8<sup>th</sup> edition, revision 6).

Independent claim 1, as amended, recites a combination including, for example, “determining whether an update delay condition exists based on the location of the target module with respect to a primary data link and a secondary data link.” Kacel and Zhou fail to teach or suggest at least this feature of amended claim 1. The Office Action correctly notes that “Kacel did not explicitly state determining the existence of a delay condition.” (Office Action at 3.) Zhou fails to cure the deficiencies of Kacel.

The Office Action alleges that “Zhou demonstrated that it was known at the time of invention to delay updates based upon delay conditions (column 9, lines 3-10).” (Office Action at 3.) Applicant respectfully disagrees.

In the portion cited in the Office Action, Zhou states that “Such an update is termed a ‘synchronous’ update. Preferably the active component may either ‘block’ (stop further processing) until an acknowledgment for a particular synchronous update has been received, or delay further processing related to individual synchronous

updates, in which case the active component will be sent an acknowledgment notification message for each such synchronous update.” Zhou, column 9, lines 3-10, emphasis added. However, Zhou's teaching of an acknowledgement based synchronous update does not constitute “determining whether an update delay condition exists based on the location of the target module with respect to a primary data link and a secondary data link,” as recited in amended claim 1 (emphasis added).

The Office Action alleges that Kacel teaches “determining whether the target module is located on a primary data link or a secondary data link (Kacel: figure 1, elements 130, 132, 134, the connections provided).” (Office Action at 4, emphasis original.) Applicant respectfully disagrees.

Kacel explicitly states that “Information may be communicated over data communication bus 115 from one module 130 to one or more other modules 132, 134. . . . Alternatively, information may be communicated over data bus 115 from one or more of modules 130, 132, 134 to telematics module 120.” Kacel, column 5, line 63-column 6, line 2, emphasis added. However, Kacel's teaching of data communication via a single data bus 115 cannot constitute “determining whether an update delay condition exists based on the location of the target module with respect to a primary data link and a secondary data link,” as recited in amended claim 1 (emphasis added).

Therefore, Kacel and Zhou, taken alone or in combination, fail to teach or suggest all elements of amended claim 1. A *prima facie* case of obviousness has not been established. Accordingly, Applicant respectfully requests withdrawal of the Section 103(a) rejection of amended claim 1. Because claims 2-9, 11, 12, and 14-16

depend from claim 1, Applicant also requests withdrawal of the Section 103(a) rejection of claims 2-9, 11, 12, and 14-16 for at least the same reasons stated above.

Further, amended independent claims 17 and 34-37, while of different scope, include similar recitations to those of amended claim 1. Claims 17 and 34-37 are therefore also allowable for at least the same reasons stated above with respect to amended claim 1. Applicant respectfully requests withdrawal of the Section 103(a) rejection of amended claims 17 and 34-37 and claims 18-29 and 31-33, which depend from claim 17.

**Conclusion**


In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: July 2, 2008

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